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PUCT Docket No. \_\_\_TBD\_\_\_

Public Utility Commission of Texas – June 8<sup>th</sup>, 2021

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**Joint Formal Complaint of Thigbe Aggregation Members (over 50 KW)  
against Mid American Energy Services LLC and  
Motion to Allow other Similarly Situated Customers to Join this Complaint**

**COMES NOW**, Members of Thigbe LLC's commercial aggregation group from the spring of 2019 ("Thigbe Members") (See the list of individual Thigbe Members at the end of this document), and file this joint formal complaint against Mid American Energy Services LLC, ("MES"), for violations of the Public Utility Regulatory Act (PURA) and Public Utility Commission of Texas ("Commission") Substantive Rules. In accordance with P.U.C. Subst. Rule 25.471, 25.474, 25.480, and 25.481, Thigbe Members seek the Commission's involvement in resolving disputes between Thigbe Members and MES primarily regarding unauthorized charges for electric service and possible fraudulent or deceptive trade practices. Despite efforts, including an informal complaint, to resolve these disputes, Thigbe Members and MES have not succeeded in doing so. By this proceeding, Thigbe Members complain of MES's actions, and request that the Commission grant all appropriate relief, including an order prohibiting MES from further attempts to collect unauthorized charges and requiring MES to refund any unauthorized charges that may have been paid to date by Thigbe Members or any other similarly situated customer that may join this proceeding.

Because of the multitude of MES customers that are experiencing these same unauthorized charges Thigbe Members request that the Commission allow other interested customers to join this complaint in order that the Commission's resources may be better utilized and so that more Texas customers can more easily defend themselves from these egregious charges.

**I. Overview**

The core facts of this joint complaint are as follows. Thigbe Members and MES entered into electric service agreements in March of 2019 in which the energy rate was supposed to be, and up to February of 2021 were, fixed for the duration of the agreements. In addition, the agreements make no provision for MES to unilaterally transform the fixed

energy rate into a variable energy rate. Contrary to the terms of these agreements, MES has been charging and attempting to collect unauthorized charges from Thigbe Members for ancillary services that occurred during February, 2021.

## **II. Commission Jurisdiction over This Proceeding**

At the same time that the Texas Legislature enacted the bill establishing customer choice,<sup>1</sup> it also enacted a bill to protect customers once retail competition began in 2002.<sup>2</sup> To accomplish this customer protection goal, the legislature found that it was “essential that customers have safeguards against fraudulent, unfair, misleading, deceptive, or anticompetitive business practices.”<sup>3</sup> The Commission’s general jurisdiction over a customer complaint arises under PURA §§ 17.001, 39.001, 39.101 and PURA Subchapters A, C, and D. Not only does the Commission have general authority to protect customers, PURA tasks the Commission to protect customers from specified conduct. One of those protections is that electric service providers are prohibited from attempting to collect unauthorized charges from customers.<sup>4</sup> Another is protection against “fraudulent, unfair, misleading, deceptive, or anticompetitive business practices” as stated in PURA 17.001.

This Complaint also arises generally from rules the Commission enacted to implement its customer protection authority, and, more specifically, P.U.C. Subst. R. 25.107, 25.471, 25.474, 25.480, 25.481 and 25.485, particularly as they pertain to retail electric providers (REP). The Commission also has authority to take enforcement action against MES as set forth by PUC Subst. R. 25.492.

## **III. Statement of Facts**

In support of its joint complaint, Thigbe Members would show as follows:

- 1) Thigbe requested firm fixed pricing with all cost components other than delivery tariff costs and taxes to be fixed with 100% swing for all 90 customers.
- 2) MES responded to said bid request and presented their pricing as fixed.
- 3) Of the 90 customers contracted with MES through the RFP process MES is passing through additional costs only to those customers that are over 50 KW.

All of the under 50 KW customers, that MES, based on their response to our

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<sup>1</sup> Senate Bill 7 in 1999.

<sup>2</sup> Senate Bill 86 in 1999.

<sup>3</sup> PURA § 11.002.

<sup>4</sup> PURA Subchapter D.

informal complaint, believes are more fully protected by the PUC's customer protection rules, are not being billed these unauthorized charges. The fact that MES is not charging these costs to smaller, presumably better protected, customers that have substantially the same contract language is, we believe, indicative of MES knowing that they cannot fully justify these unauthorized costs.

- 4) Appendix A to this filing lists the "Billing Adjustments" being levied by MES against the 17 Thigbe Members that were over 50 KW out of the 49 customers in the actual bid group.
- 5) Schedule A of the contract states that:

If the aggregate demand at all of Customer's commercial Facility(ies) is greater than fifty (50) kW, Customer understands that by signing this Agreement Customer is agreeing to materially different customer protections than those specified by the Customer Protection Rules (Subchapter R) of the Public Utility Commission of Texas Substantive Rules. These rules can be found at <http://www.puc.state.tx.us/rules/subrules/electric/index.cfm>. This agreement identifies the specific protections to which the Customer is agreeing, which include the protections as outlined in these sections of the Customer Protection Rules of the Public Utility Commission 25.495 (relating to Unauthorized Change of Retail Electric Provider), 25.481 (relating to Unauthorized Charges) and 25.485(a)-(b) (relating to Customer Access and Complaint Handling)

The language above does not specify any portions of the customer protection rules that are being waved. It only states those portions of the rules to which the customer is specifically agreeing. Hence, all of the customer protection rules would still seem to apply. Specifically, section 25.481, relating to unauthorized charges, does apply.

- 6) With regards to all items included in the "fixed cost" the contract states in Schedule B, paragraphs 5, 6 and 7 (see the contract snippet on the following page), that ancillary services are clearly included as fixed. The clear and implied meaning of including items in this section of the contract is that the pricing should not change, absent, as provided for elsewhere in the agreement, for reasons beyond the reasonable control of MES (force majeure, change in law, etc). It is incredulous at least, and deceptive or fraudulent at worst, to claim a price is fixed in the contract while having every intention of charging the customer a different price if you so desire.

**FIXED PRICE.** If Customer does not elect an On-Peak/Off-Peak Fixed Price, the Fixed Price will be applied to all usage within the respective Pricing Period and is inclusive of congestion (including local, inter-zonal, and HUB to zone congestion charges)

**VARIABLE PRICE.** The Variable Price per kWh for Interval Energy Usage shall be the associated interval Day Ahead Settlement Point Prices (SPP) for the Load Zone applicable to the ESI ID(s) listed on Schedule A (in \$/kWh) and is inclusive of congestion (including local, inter-zonal, and HUB to zone congestion charges)

Pricing Period	On-Peak/Off-Peak Fixed Price (\$/kWh)		Fixed Price (\$/kWh)
	On-Peak	Off-Peak	
Jun 2019 - Apr 2022	N/A	N/A	\$0.04583

The Fixed Price and/or the Variable Price Adder includes costs associated with line loss based on applicable transmission and delivery tariff loss factors, renewable compliance costs, all charges assessed by ERCOT and Ancillary charges. Renewable compliance charges include, but are not limited to costs associated with renewable portfolio standards or all other environmental and renewable program compliance costs required by the Delivery Company, ERCOT, state or federal regulatory agencies. The term "Ancillary" means wholesale electric services, capacity, Regulation Up Service Charges, Regulation Down Service Charges, Responsive Reserve Service Charges, Non-Spinning Reserve Service Charges, Reliability Unit Commitment Charges and other costs required to facilitate delivery of electricity to Customer's Delivery Points.

**In addition to the Fixed and/or Variable Price in this Schedule B, MidAmerican will include and Customer will pay the following as additional line items on the monthly invoice:**

7) Elsewhere in the agreement - Schedule B, page 2, paragraph 3 states:

Any future changes in the business practice or business protocols of the Delivery Company, RTO, or ISO, Ancillary charges or applicable Delivery charges or transmission tariffs that affect the items included in the applicable Fixed Price and/or Variable Price, as defined in this Schedule B, may be incorporated herein as a separate adjustment as of the effective date on which the change occurs or thereafter.

And, on the same page, paragraph 5:

**CHANGE IN LAWS.** Costs incurred by MidAmerican, whether positive or negative, after the date of this Schedule, resulting from changes in applicable federal or state law, tariffs or the regulatory interpretation that can be reasonably allocated to Customer, will be billed as an authorized charge or adjustment or reduction to prices as defined in the Schedules of this Agreement. In the event of a change in law, either Party then has the right to terminate this Agreement upon 30 days advance written notice to the other Party and any settlement amount shall be calculated according to the Events of Default; Remedies section of the Agreement. Such changes in applicable federal or state law or tariffs or regulatory interpretation will not be deemed an event of Force Majeure.

MES has referenced paragraph 3 as the provision of the contract that allows them to pass through the extra ancillary service costs. The Thigbe Members have a very different interpretation of this paragraph given its context in the rest of the agreement and its construction in this paragraph. Our understanding, based on conversations with MES sales personell, was that the listing of "Ancillary charges or applicable delivery charges or transmission tariffs that affect the items...." were examples of the items that could be changed by "Any future changes in the business practice or business protocols of the Delivery Company, RTO or ISO" from earlier in the sentence. This is how the paragraph was explained to Thigbe when we were negotiating the deal, making it essentially similar to, but slightly different from, a change in law. According to that interpretation we have asked MES what changes in "business practice or business protocols" they believe

justify passing through these additional costs and they have yet to respond with any justification other than repeatedly referencing this contract language.

8) It is Thigbe Members' contention that there has been no change in law or change in protocol or business practice that would allow MES to pass through any additional costs.

9) Thigbe Members' clear understanding of the contract was again expressed in Thigbe's awarding of the supply contract to MES in which we stated that:

"Mid-American is winner for the three year term (all contracts ending 4/2022) for the 90 accounts at \$0.04583/kwh based on the assumption that this is an all in fixed price for the term for the various start dates and the price is to the LZ with unlimited swing. Please confirm."

Mid American, if they believed this statement to be incorrect, made no indication of that in their acceptance of the contract award thereby calling into question again, whether or not there was an intention on MES's part to defraud Thigbe Members.

#### **IV. Complainant's Informal Resolution Attempts**

Thigbe has attempted several times to resolve these disputes with MES of these unauthorized charges, including the filing of an informal complaint with the PUC regarding these matters. That informal complaint process was concluded with a letter from the PUC staff on May 25<sup>th</sup>, 2021.

#### **V. Motion to Allow Other Parties to Join this Complaint**

Thigbe Members respectfully request that other similarly affected customers be allowed to join this complaint should they so desire. It is our understanding that there are a multitude of other customers with similarly misinterpreted contract language that are being charged exorbitant amounts from MES. To simplify processes for the PUC, the other effected customers and MES and possibly the State Office of Administrative Hearings, we believe it would be prudent and practical to allow customers with similar or identical complaints to join this docket.

#### **VI. Thigbe Members' Representative**

The Thigbe Members' representative is:

Mike Brasovan  
Thigbe LLC  
[Mike@Thigbe.com](mailto:Mike@Thigbe.com)

1015 Champions Dr, Suite 100  
Aledo, Texas 76008  
Phone: 817.369.5678 – Fax: 817.369.5672

Thigbe Members request that all correspondence, pleadings, orders, briefs and other documents be served upon Thigbe Members' representative electronically at the email address shown above.

### VIII. Relief Sought

Thigbe Members seeks all appropriate relief within the Commission's jurisdiction for the matters alleged herein. Thigbe Members specifically request the Commission to require MES and its employees and agents to remove any charges beyond the agreed to fixed prices from the winter event from customer accounts.

Respectfully submitted,



Mike Brasovan,  
President  
Thigbe LLC

Mike@Thigbe.com

### List of Thigbe Members

Customer Name	Primary Address			
	Street	City	State	Zip
Aledo Athletics	9001 E Bankhead Hwy	Aledo	TX	76008
Brewed LLC	801 W Magnolia Ave	Fort Worth	TX	76104
Brumbaugh's Fine Furnishings	11651 W. Camp Bowie Blvd.	Fort Worth	TX	76108
Christ the Redeemer Church	126 N. Judd St.	White Settlement	TX	76108
Cornerstone Assistance Network	3500 Noble Ave.	Fort Worth	TX	76111
ED&P Sunny Street Cafe	229 Shops Blvd, #103	Willow Park	TX	76087
Family Life Solutions	7700 Camp Bowie Blvd, #129	Fort Worth	TX	76116
Freedom Power Sports LLC	3301 Hamilton Ave.	Fort Worth	TX	76107
Hope Farm, Inc.	865 E. Ramsey Ave	Fort Worth	TX	76104
Joe's Pizza Pasta	3000 S. Hulen #142	Fort Worth	TX	76109
Lasiter & Lasiter Plumbing	6307 Midway Rd.	Haltom City	TX	76117
Ministry Safe LLC	6001 River Oaks Blvd. #400	Fort Worth	TX	76114
Pentecostal Church of God	2701 Brown Trail	Fort Worth	TX	76021
Spillers Works	407 N. Bishop Ave.	Dallas	TX	75208
Tarrant Area Food Bank	2525 Cullen St.	Fort Worth	TX	76107
Trinity Bible Church	4936 Interstate 20 Frontage R	Willow Park	TX	76087
Veterinary Health Care Concepts	4801 West Fwy.	Fort Worth	TX	76107

# Appendix A

Listing of “Billing Adjustments” charged to Thigbe Customers by MES

<b>Customer</b>	<b>Total kWh</b>	<b>Billing Adjustment</b>
Aledo Athletics	1,709	\$ 2,042.58
Brewed LLC	3,210	\$ 4,215.47
Brumbaugh's Fine Furnishings	2,683	\$ 3,910.36
Christ the Redeemer Church	3,005	\$ 3,865.85
Cornerstone Assistance Network	14,933	\$ 22,606.32
ED&P Sunny Street Cafe	1,462	\$ 1,974.74
Family Life Solutions	3,381	\$ 4,854.70
Freedom Power Sports LLC	39,720	\$ 58,743.37
Hope Farm, Inc.	6,726	\$ 9,473.98
Joe's Pizza Pasta	1,796	\$ 2,295.36
Lasiter & Lasiter Plumbing	1,972	\$ 2,787.51
Ministry Safe LLC	6,631	\$ 10,080.22
Pentecostal Church of God	40,682	\$ 61,836.34
Spillers Works	12,372	\$ 17,831.34
Tarrant Area Food Bank	30,241	\$ 48,409.23
Trinity Bible Church	12,788	\$ 19,965.68
Veterinary Health Care Concepts	15,118	\$ 19,890.50
Totals	198,429	\$ 294,783.55